Supreme Court, U.S.
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No. 01-835

IN THE

Supreme Court of the United States

SAO PAULO STATE
OF THE FEDERATIVE REPUBLIC OF BRAZIL,

Petitioner,

v.

THE AMERICAN TOBACCO CO., INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY FOR THE PETITIONER

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REPLY FOR THE PETITIONER

In square conflict with decisions of this Court and other circuits, the Fifth Circuit in this case held that a district judge "abused his discretion" by not disqualifying himself based on allegations of bias that were not only indisputably false but also utterly attenuated to the case before him. Respondents devote most of their brief in opposition ("BIO") to irrelevant issues and to an assertion of potential mootness that is as meritless as it is convoluted, none of which undermine the Petition. Six respected judges correctly explained, in essentially imploring this Court to grant certiorari, that the decision below "disregards the unanimous voices of other U.S. Courts of Appeals" and "clearly call[s] into question the oath we take when we become federal judges." Pet. App. 8a, 13a. This case accordingly presents the Court with an important opportunity to articulate the standards governing frequently recurring demands for judicial disqualification. Certiorari should be granted.

I. Respondents Gravely Mischaracterize MDL Rules And The *Panama* And *Sao Paulo* Cases.

Respondents principally address an irrelevant issue: whether Judge Barbier should have waited for the MDL Panel to decide whether to consolidate the various foreign tobacco cases so that, if consolidation occurred, the transferee court could have decided the remand question. See generally Reply App. 1a-2a (orderly chronology of events haphazardly cited by respondents). Of course, respondents bury in a footnote on page 16 that the transferee court later explicitly *agreed* with Judge Barbier's ruling (see *In re Tobacco (Venezuela)*, 100 F. Supp. 2d 31, 38 n.3 (D.D.C. 2000)), rendering much of the BIO entirely disingenuous. Moreover, Judge Barbier faithfully followed MDL Rule 1.5, which (as respondents "grudgingly acknowledge[d]" below (Pet. App. 42a)) specifies that MDL proceedings "do[] not affect or suspend orders and pretrial proceedings in the district court in which the action is pending and do[] not in any way limit the pretrial jurisdiction of that court."

Respondents nonetheless erroneously contend that, despite Rule 1.5, district courts uniformly stay action on remand motions, that the MDL panel has approved this practice, and that Judge Barbier's denial of a stay was thus "a patent abuse of discretion." BIO 11 n.*, 18. Judge Barbier cogently explained that respondents had taken the quotation on which they rely entirely out of context. See Pet. App. 42a (explaining that, in context, MDL chairman's statement that "'that is the way [the district courts] do it'" was a "*lament*" (emphasis added)). Indeed, both the Fifth Circuit and the MDL Panel have recently reaffirmed the longstanding rule that district courts are completely free to rule on remand motions while MDL proceedings are pending. *Rio de Janeiro* v. *Philip Morris, Inc.*, 239 F.3d 714, 715 (CA5 2001); *In re Asbestos Prods. Liab. Litig.*, 170 F. Supp. 2d 1348, 1349 n.1 (MDL 2001). Not only do district courts *routinely* do so,[1] but there is a substantial view that a district court *must* rule on a pending remand motion without granting a stay because it cannot "stay proceedings over which it lacks jurisdiction." *Lloyd* v. *Cabell Huntington Hosp.*, 58 F. Supp. 2d 694, 696 (S.D.W. Va. 1999).[2]

Respondents nonetheless criticize Judge Barbier for not staying the *Sao Paulo* case because, by that date, the MDL Panel had consolidated other foreign tobacco suits and could have soon decided whether to transfer the *Sao Paulo* case as well. Not only does Rule 1.5 specify, and MDL and Fifth Circuit precedent establish, that no such stay is appropriate, but a stay would have been uniquely inappropriate in this case because

[1] For very recent examples, see *Mauck* v. *Warner-Lambert Co.*, No. 7:01-CV-027-R, 2001 U.S. Dist. LEXIS 5919, at *5-*7 (N.D. Tex. May 7, 2001); *Triad Indus.* v. *UPS*, No. 00-cv-0619-MJR, 2000 U.S. Dist. LEXIS 18824, at *2-*3 (S.D. Ill. Nov. 17, 2000); *Farkas* v. *Bridgestone/Firestone, Inc.*, 113 F. Supp. 2d 1107, 1115 n.8 (W.D. Ky. 2000); *Fu's Garden Restaur.* v. *ADM Co.*, No. C 99-5452, 2000 U.S. Dist. LEXIS 6799, at *2 n.1 (N.D. Cal. May 12, 2000); *Havens Protected "C" Clamps* v. *Pilkington PLC*, No. 00-2035-JWL, 2000 U.S. Dist. LEXIS 4905, at *4-*5 (D. Kan. Mar. 29, 2000).

[2] Respondents' assertion that 26 of the 27 other foreign tobacco cases were *eventually* "formally or informally" stayed (BIO 10 n.*, 11 n.*) is misleading. At the time Judge Barbier heard argument on the *Panama* remand motion (Mar. 17, 1999), only one court had entered such a stay.

Judge Barbier had already ruled that removal was improper, and that he lacked jurisdiction, in the indistinguishable *Panama* case. When respondents attempted to remove this case notwithstanding his controlling *Panama* ruling, Judge Barbier rightly viewed himself as without jurisdiction to do anything but remand it as well. Judge Barbier also correctly concluded that MDL consolidation could not have resulted in uniform treatment of foreign tobacco suits because, by that time, two cases had already been remanded to state court. See Pet. App. 41a.[3]

II. Respondents' Convoluted Contention That The Petition May Become Moot Is Meritless.

Respondents' mootness argument seems to be as follows: (i) in a separate suit brought by Venezuela, the D.D.C. has endorsed Judge Barbier's rulings that the federal courts lack jurisdiction over foreign tobacco cases (see *supra* at 1); (ii) the D.C. Circuit may soon reject respondents' pending challenge to the *Venezuela* decision; and (iii) if so, the D.D.C. may, in turn, invoke its *Venezuela* ruling to remand the *Sao Paolo* case to state court as well, a result that supposedly would provide petitioner all the relief it seeks through this Petition. See BIO 18. Respondents' argument suffers from four distinct flaws.

First, as respondents know perfectly well, the scenario they posit *cannot possibly occur* because there is no motion to remand pending. Petitioners could not even file such a motion because (as respondents admit (BIO 16-17)), the case has long been stayed in the D.D.C.

Second, in any event, this Court regularly grants certiorari when ongoing proceedings in the lower courts create a potential for mootness.[4] The lower courts, however, consistently stay their proceedings while the case is *sub judice* in this Court.

[3] Respondents' invocation of the MDL Panel's "conditional transfer" of the *Sao Paulo* case (BIO 13-14) is misleading because they fail to advise the Court that on April 24, 2000 – two weeks after the Order they cite and before Judge Barbier ruled – the MDL Panel *stayed* the conditional transfer.

[4] For example, that is generally true in cases in which the court of appeals has remanded to the district court. See, *e.g.*, Cert. Reply, No. 01-682, *Barnes* v. *Gorman*, at 5-6 (collecting cases), *cert. granted*, 122 S. Ct. 865 (2002).

Here, even that additional step would be unnecessary, for (as noted) the D.D.C. has already stayed the case. If the D.C. Circuit rejects respondents' challenge to the D.D.C.'s *Venezuela* decision, and the D.D.C. subsequently considers lifting the stay in this case so that petitioner could file a motion to remand, petitioner will seek (and no doubt receive) a further stay of any proceedings until this Court rules on the merits.

Third, in any event, a remand by the D.D.C. would not provide petitioner with all the relief it seeks. Petitioner has a constitutionally sufficient interest in pursuing this Petition because, if petitioner prevails, this Court's judgment would reverse the Fifth Circuit's order taxing petitioner, as the losing party on appeal, with costs (see Pet. App. 28a). Cf. *University of Texas* v. *Camenisch*, 451 U.S. 390 (1981).[5]

Fourth, this would be an inappropriate context to interpret the mootness doctrine to frustrate review in this Court. This Petition implicates not just petitioner's interests but the integrity of a sitting federal judge who is disabled from challenging the decision below. In case of doubt, the interests of justice therefore militate in favor of finding an ongoing controversy.[6]

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[5] Petitioner also has a significant interest in ensuring that the Eastern District of Louisiana (not the D.D.C.) remands the case. Parties regularly seek other relief from federal court, including injunctions against the state court proceedings, which would lie within the remanding court's jurisdiction. Of note, petitioner would benefit from the Fifth Circuit's narrow interpretation of the federal courts' power under the All Writs Act to interfere with state court proceedings. Compare *Texas* v. *Real Parties In Interest*, 259 F.3d 387 (CA5 2001), *cert. denied*, 70 U.S.L.W. 3463 (No. 01-775, Jan. 22, 2002) with *United States* v. *District of Columbia*, 654 F.2d 802 (CADC 1981).

[6] Respondents' alternative argument – that respondents believe that, if the D.C. Circuit instead *reverses* the D.D.C.'s *Venezuela* remand ruling, they will eventually prevail on the merits (BIO 18-19) – only illustrates another respect in which petitioner has a substantial interest in pursuing this Petition. If this Court reverses the Fifth Circuit's judgment in this case, the D.D.C.'s rulings will be void for lack of jurisdiction; that was precisely *respondents'* logic in successfully arguing that Judge Barbier's remand ruling was void because he had improperly failed to recuse himself. Nor would it "make little sense" to reverse any judgment on the merits (contra *id.* 18), something that this Court does with regularity. In any event, the claims in this case, which rest on *non-federal law*, are entirely viable on the merits.

III. The Petition Satisfies All Certiorari Criteria.

A. The Fifth Circuit's Legal Holding Is Not "Fact-Bound," But Rather Directly Conflicts With Decisions Of Other Circuits.

Respondents' repeated assertion that the decision below is "fact bound" is most notable for two arguments that they do *not* make. *First*, they do not contend that the decision below is "fact bound" in the sense that facts implicating the Fifth Circuit's holding will not recur, for plainly they will. Obviously, *any* case on *any* subject matter can implicate the Fifth Circuit's ruling that a district judge must be disqualified as a matter of law based on a supposed pre-judicial association with a position on an issue raised by the case. *Second*, respondents do not contend that the circuit conflicts identified by the Petition actually reflect "fact-bound" differences in the cases. Notably, respondents' eight law firms were unable to articulate *any* difference between this case and those cited in the Petition, or to identify *any* other circuit that would reach the same result.

Respondents instead argue that the decision below is "fact bound" because disqualification is a "*fact-intensive*" issue. But, the facts still must be applied to a legal standard. See Pet. 12-13. Thus, respondents do not seriously dispute (i) that, in holding that disqualification is required *on these facts*, the Fifth Circuit necessarily embraced certain principles of law, (ii) that those principles will *a fortiori* require disqualification in commonly recurring circumstances, or (iii) that the Fifth Circuit recognized that its legal standard was outcome determinative by acknowledging that, even under its exceedingly lenient test, "this is a close case for recusal" (Pet. App. 36a).

The decision below does, in fact, rest on clear principles of law that conflict with other circuits' holdings – including by adopting the principle of "issue recusal," notwithstanding respondents' attempt to disavow that label – as is readily apparent from the BIO itself. Respondents principally argue that Judge Barbier held "key leadership positions" in the LTLA (BIO 21), which (in the *Gilboy amicus* brief) supposedly "took positions on core factual and legal issues" relevant to this case

and against the defendants in this case (*id.* 20), such that, even if Judge Barbier "was *not* involved in the preparation or approval of the *Gilboy* brief, a reasonable observer would nonetheless expect that Judge Barbier *shared the views* expressed by the Association in *Gilboy*" (*id.* 25 (all emphases in original)).

That rationale *is* "issue recusal," nothing more and nothing less. The Fifth Circuit and respondents contend that a reasonable person would believe that, because the LTLA took a particular legal position on an issue, Judge Barbier is biased in his disposition of this similar case. Other circuits – as well as the recusal opinions of the Chief Justice, Justice Breyer, and Judge Posner – *categorically* reject that proposition, recognizing that federal judges take a solemn oath of office to decide the cases before them impartially and that active pre-judicial involvement in matters is beneficial, not disqualifying. See Pet. 24-28 (citing, *inter alia*, *United States* v. *Snyder*, 235 F.3d 42, 48 (CA1 2000) ("Far from necessarily warranting recusal, typically such views merely mark an active mind."); *Cipollone* v. *Liggett Group*, 802 F.2d 658, 659 (CA3 1986) (if such a proposition were accepted, "then only the least informed and worst-prepared lawyers could be appointed to the bench"); *Laird* v. *Tatum*, 409 U.S. 824, 835 (1972) (Rehnquist, J.) (limiting judges to deciding issues on which they were "tabula rasa * * * would be evidence of lack of qualification, not lack of bias")).

Manifestly, other circuits would reach the opposite result in this case because the Fifth Circuit's holding necessarily embraces the most absurd, hyper-attenuated application of "issue recusal" imaginable. It is undisputed that Judge Barbier had *nothing* to do with the LTLA's *Gilboy amicus* brief, that his name did not even appear on the brief itself, and that he *never* litigated a tobacco case in his entire career as a private attorney. The LTLA is a general voluntary bar, not in any way specifically concerned with tobacco litigation. Moreover, despite respondents' overheated rhetoric, even the Fifth Circuit recognized that this case and *Gilboy* "may be distinguishable" and merely involved "similar" allegations (Pet. App. 35a). Finally, the *Gilboy* brief involved a single case filed nearly a decade before Judge Barbier assumed the bench, a consideration

that other circuits would deem determinative. See Pet. 23, 25 n.6. If the decision below is correct, every federal judge is disqualified as a matter of law from sitting in any case in which an organization for which he or she was an officer in the last decade took a position; disaffected litigants will therefore regularly investigate, and demand disqualification on the basis of, pre-judicial relationships with voluntary bar associations or other organizations that take positions on varied issues – from the Chamber of Commerce to the Lawyers' Committee for Civil Rights. Other circuits reject any such extraordinary suggestion.[7]

Respondents' alternative defense of the Fifth Circuit's decision merely highlights another square circuit conflict. They emphasize that the *Gilboy amicus* motion and the Louisiana Supreme Court's subsequent opinion identified, *inter alios*, Judge Barbier and one of petitioner's attorneys as the LTLA's counsel. BIO 21. But, given that the listing was *erroneous*, the Fifth Circuit held that disqualification was mandated only because, under that court's legal standard, a judge's undisputed and "on the record" representations do not remove the appearance of impropriety. Thus, the court of appeals ruled that Judge Barbier's representations "do not dissipate the doubts that a reasonable person would probably have about the court's impartiality" (Pet. App. 36a), a view that respondents embrace: "A reasonable observer here would at the very least reasonably question whether [Judge Barbier] had no involvement in such a high-profile and controversial matter." BIO 24-25.

Once again, other courts and distinguished jurists *categorically* reject that legal standard, holding instead that the "reasonable person" for purposes of 28 U.S.C. § 455(a) is one who equips himself with all of the information available on the record. Manifestly, when the record is uncontroverted, as it is in

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[7] Respondents' reliance on the overlapping defendants in this case and *Gilboy* is a straw-man that the Fifth Circuit did not adopt and that other circuits would similarly reject. The defendants overlap only because both cases are suits against the entire industry; more relevant is the fact that the *Gilboy* brief made no unique assertions regarding the overlapping defendants. In point of fact, a judge is not prohibited even from hearing a case involving a party against whom he litigated in private practice. See Pet. 23-24.

this case, there can be no perception of bias. See Pet. 18-24 (citing, *inter alia*, *El Fenix de Puerto Rico* v. *The M/Y Johanny*, 36 F.3d 136, 140 (CA1 1994) (disqualification improper when, notwithstanding conceivable inferences of bias, movant "challenge[d] none of the findings underlying the [district court's] recusal order"); *In re Drexel Burnham Lambert*, 861 F.2d 1307, 1313 (CA2 1988) (distinguishing "a straw poll of the only partly informed man-in-the-street" from proper inquiry into "record facts and the law" as viewed by "reasonable person knowing and understanding all the relevant facts"); *Microsoft Corp.* v. *United States*, 530 U.S. 1301, 121 S. Ct. 25, 26 (2000) (Rehnquist, C.J.) (test is "an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances")).[8]

Respondents also lack any persuasive answer to the important conflict created by the Fifth Circuit's "hold[ing] that a reasonable person might harbor doubts about the trial judge's impartiality, and thus the district court *abused its discretion* in denying the defendants' motion to recuse." Pet. App. 37a (emphasis added). Even treating the Fifth Circuit's unelaborated statement that a reasonable person "would" perceive bias as part of the court's legal standard (see BIO 30), not even *respondents* suggest that the Fifth Circuit required anything approaching a demonstration that Judge Barbier showed a "clear error of judgment" (*Datagate* v. *Hewlett-Packard Co.*, 941 F.2d 864, 871 (CA9 1991)), or that "the impropriety is clear and one

[8] Two related arguments raised by the BIO, neither of which the Fifth Circuit or any other court has accepted, require only brief comment. *First*, respondents' claim (BIO 25) that there is a heightened ground for disqualification based on *pro bono* activities, as opposed to paying work, remains befuddling and offensive to the better principles of the bar. Judges who have engaged in *pro bono* service are not less faithful to their oaths, and respondents' position would encompass innumerable charitable services. Furthermore, given that Judge Barbier never litigated a tobacco case in his career, it is silly to suggest that a reasonable observer would perceive him as an anti-tobacco activist. *Second, of course* Judge Barbier did not disavow the LTLA's position in the *Gilboy amicus* brief (*id.* 26), nor did he embrace it in any way. He consistently remained entirely neutral as to all of the questions presented by the case, just as the canons of judicial ethics require.

which would be recognized by all objective, reasonable persons" (*United States* v. *F. Lee Bailey*, 175 F.3d 966, 968 (CA11 1999)), much less that Judge Barbier's decision not to recuse himself "cannot be defended as a rational conclusion supported by [a] reasonable reading of the record" (*In re United States*, 666 F.2d 690, 695 (CA1 1981)). To the contrary, the Fifth Circuit reasoned that "this is a close case for recusal," but that whenever "the question of whether § 455(a) requires disqualification is a close one the balance tips in favor of recusal." Pet. App. 36a. In such a "close case," other circuits manifestly would hold that a judge did not "abuse his discretion" in declining to recuse himself.

B. The Decision Below Directly Implicates This Court's Supervisory Authority And Conflicts With This Court's Precedents.

Even if the decision below did not conflict with other circuits' interpretation of Section 455(a), certiorari would be warranted because the Fifth Circuit's holding is contrary to two of this Court's decisions and, by calling into question federal judges' fidelity to their oaths, calls for an exercise of this Court's supervisory authority over the federal courts.

The conflict with the holding of *Liteky* v. *United States*, 510 U.S. 540, 552 (1994), that Section 455(a) must not be construed "as implicitly eliminating a limitation explicitly set forth in § 455(b)" is manifest. See Pet. 14-16. Section 455(b)(2) addresses *precisely* the facts that the Fifth Circuit held mandate recusal here: the judge's relationship to (i) the case before the court, and/or (ii) the parties' lawyers. Respondents, however, offer only the *ipse dixit* that "[o]bviously * * * the grounds for recusal here go far beyond any 'specific aspect' addressed by § 455(b)." BIO 29. That is true only in the sense that, contrary to *Liteky*, the Fifth Circuit required disqualification in circumstances that go "far beyond" anything Congress contemplated – *viz.*, where the prior case is *not* "the matter [now] in controversy" (§ 455(b)(2)), where the judge did *not* "serve[] as [a] lawyer" in that matter (*id.*), and where the judge did *not* "previously practice[] law" with one of the attorneys before him (*id.*).

The decision below also conflicts with *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847 (1988). Invoking *Liljeberg*'s holding that disqualification may be appropriate even if the judge is not presently aware of facts creating a serious impropriety (486 U.S. at 860-61), respondents try to defend the Fifth Circuit's rule that disqualification is required if the public might believe things that indisputably *are not true* (such as that Judge Barbier participated in the *Gilboy* brief) (see BIO 27). That is ridiculous – *Liljeberg* reasons that disqualification turns on an objective inquiry into the actual "*facts* creating an appearance of impropriety" (486 U.S. at 860 (emphasis added)), which the Fifth Circuit eschewed (see *supra* at 7). This Court's holding merely "called upon [the judge] to rectify an oversight," not to "perform the impossible." 486 U.S. at 861. Moreover, Judge Barbier's failure to disqualify himself was, at most, harmless and thus not subject to reversal. 486 U.S. at 862. The "harm" respondents allege – that the district judge to which this case was reassigned did not remand but instead waited for the cases to be consolidated, and that courts have dismissed foreign tobacco cases that rest on *federal law* theories (BIO 28) – are immaterial in this context. The relevant point is that, while Judge Barbier is supposedly perceived as biased in deciding *the merits* of tobacco litigation, the only issue he ever decided was the wholly *procedural* question whether (i) to remand the case to state court, or instead (ii) to wait potentially to permit some other judge to decide whether to remand it. Indeed, as noted (see *supra* at 1) the transferee judge later *agreed* with Judge Barbier's remand ruling.[9]

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, certiorari should be granted.

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[9] Respondents' assertions of "waiver" (BIO 27, 29 n.*) are misguided. *Liljeberg* discussed "harmless error" as a means of construing § 455, not as a distinct doctrine that would have to be separately asserted (compare Fed. R. Civ. P. 61). All the proceedings on appeal in this case and *Panama* related to the construction of § 455, and a party is not prevented from citing additional cases in this Court.

Respectfully submitted,

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February 6, 2002

CHRONOLOGY OF EVENTS CITED BY RESPONDENTS

10/6/98	*Panama* suit re-filed in Louisiana state court
11/5/98	*Panama* defendants remove to E.D. La.; assigned to Barbier, J.
12/3/98	*Panama* plaintiff moves to remand
1/5/99	*Panama* defendants move to recuse Barbier, J.
2/3/99	Barbier denies motion to recuse in *Panama*
2/16/99	Respondents request MDL consolidation of six foreign tobacco suits, including *Panama*
2/23/99	*Panama* defendants oppose remand and seek stay
3/1/99	S.D. Tex. *sua sponte* transfers *Bolivia* suit to D.D.C.
3/17/99	Barbier holds argument on motions for remand and stay in *Panama*
4/28/99	S.D. Fl. stays proceedings in *Venezuela* pending MDL ruling as a matter of discretion (1999 U.S. Dist. LEXIS 22742)
5/21/99	MDL hears argument on consolidation motion
5/28/99	Barbier denies motion for stay and grants remand in *Panama*
6/10/99	MDL panel transfers suits pending in federal courts to D.D.C., explicitly excluding *Panama* (1999 U.S. Dist. LEXIS 8803)
12/10/99	S.D. Fl. stays *Goias* suit
12/30/99	D.D.C. dismisses federally filed *Guatemala*, *Nicaragua*, and *Ukraine* suits (83 F. Supp. 2d 125)
2/9/00	*Sao Paulo* suit filed in state court
3/24/00	*Sao Paulo* defendants remove to E.D. La.; assigned to Barbier, J.
4/7/00	On defendants' request, MDL Clerk issues conditional transfer order in *Sao Paulo*
4/24/00	MDL Panel stays its conditional transfer order in *Sao Paulo*

5/25/00	Barbier denies motion for stay and grants remand in *Sao Paulo* based on prior *Panama* ruling (Pet. App. 40a)
6/12/00	D.D.C. grants remand in four suits, including *Venezuela*, endorsing Barbier's *Panama* and *Sao Paulo* decisions (100 F. Supp. 2d 31)
7/17/00	CA5 reverses denial of recusal motion in *Panama* (Pet. App. 29a; 217 F.3d 343)
11/2/00	*Panama* transferred by MDL panel to D.D.C.
1/22/01	CA5 refuses to reverse remand order in *Rio de Janeiro* (239 F.3d 714)
5/14/01	CA5 reverses denial of recusal motion in *Sao Paulo* (Pet. App. 17a; 250 F.3d 315)
5/22/01	C.A.D.C. affirms dismissal of federally filed *Guatemala*, *Nicaragua*, and *Ukraine* suits (249 F.3d 1068)
9/5/01	CA5 denies rehearing *en banc* in *Sao Paulo* (Pet. App. 1a; 265 F.3d 299)
10/16/01	C.A.D.C. holds oral argument on *Venezuela* defendants' motion for mandamus to reverse D.D.C.'s remand order
11/14/01	*Sao Paulo* transferred by MDL panel to D.D.C.
12/13/01	D.D.C. stays proceedings in *Sao Paulo*